

State of Colorado



Bill Owens
Governor

John Zakhem
Board Chair

Kristin F. Rozansky
Board Director

State Personnel Board
633 17th Street, Suite 1320
Denver, Colorado 80202-3604
Phone (303) 866-3300
Fax (303) 866-5038

Meeting Minutes January 17, 2006

The State Personnel Board met in public session on Tuesday, January 17, 2006, at the Colorado State Personnel Board, 633 17th Street, Suite 1400, Courtroom 1, Denver, Colorado 80202-3604. Due to scheduling conflicts and other unforeseen difficulties, the Board was unable to meet in person at the Colorado Department of Human Services, Colorado Mental Health Institute at Pueblo, 1600 West 24th Street, Conference Room A, Pueblo, Colorado 81003, where the meeting was originally noticed.

The meeting was called to order at approximately 9:15 a.m. Board member Diedra Garcia was present in person shortly thereafter. Troy Eid, Don Mares, Elizabeth Salkind, and John Zakhem were present via teleconferencing. A call was placed to the Colorado Mental Health Institute at Pueblo, Conference Room A, to teleconference with attendees at that location; however, there were no members of the public or other attendees present.

Kristin F. Rozansky, Board Director; Assistant Attorney General Pam Sanchez, Board Counsel; and Jane Sprague, General Professional III, were present in person.

I. REQUESTS FOR RESIDENCY WAIVERS

A. January 1, 2006 Report on Residency Waivers

Director Rozansky reported that there were no residency waiver requests this month.

II. PENDING MATTERS

There were no pending matters before the Board this month.

III. REVIEW OF INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR ON APPEAL TO THE STATE PERSONNEL BOARD

- A. Perry Venard v. Department of Corrections, Arkansas Valley Correctional Facility, State Personnel Board case number 2000B114.

Director Rozansky was recused from participation in the discussion of this matter. Counsel for the Board directed the discussion, provided the history of the case, and answered questions about the current appeal of the Initial Decision of the Administrative Law Judge.

Pursuant to questions from Board members, Ms. Sanchez stated the standard of review for appeals of initial decisions: if the Board members want to change findings of fact, the findings of fact must be contrary to the weight of the evidence; if they disagree with the conclusions of law, there must be substantial evidence to support the new conclusion and it must have reasonable basis in law.

Following a discussion of Complainant's role in tool control and incident reports, Mr. Zakhem moved to adopt the findings of fact and conclusions of law in the Initial Decision of the Administrative Law Judge and to adopt the Initial Decision. Mr. Eid seconded the motion. The motion passed on the affirmative vote of the following Board members: Mr. Eid, Ms. Garcia, Mr. Mares, and Mr. Zakhem. Ms. Salkind voted in opposition to the motion.

IV. REVIEW OF PRELIMINARY RECOMMENDATIONS OF THE ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR TO GRANT OR DENY PETITIONS FOR HEARING

- A. Emmanuel Toks Adeniran v. Department of Revenue, Colorado Lottery, State Personnel Board case number 2005G039.

Mr. Zakhem moved to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing. Mr. Mares seconded the motion. The motion passed on the affirmative vote of the following Board members: Mr. Eid, Ms. Garcia, Mr. Mares, Ms. Salkind, and Mr. Zakhem.

- B. Pamela Cress v. Department of Human Services, State Personnel Board case number 2005S012.

Following a discussion of the inability to conduct discovery in the preliminary review context under the old rules, Mr. Mares moved to reject the Preliminary Recommendation of the Administrative Law Judge and grant the petition for hearing. Mr. Eid seconded the motion. The motion passed on the affirmative vote of the following Board members: Mr. Eid, Mr. Mares, Ms. Salkind, and Mr. Zakhem. Ms. Garcia voted in opposition to the motion.

- C. Michael M. Kiley v. Department of Health Care Policy and Financing, State Personnel Board case number 2005S007.

Prior to the discussion of this matter, Director Rozansky read the January 9, 2006 letter from Stacy L. Worthington, First Assistant Attorney General, to the Director regarding Respondent's failure to file an Information Sheet. Counsel for the Board noted that under Board Rule 8-51B, the letter need not be considered. If the letter was intended as a motion, Board Rule 8-51B would preclude it from being considered. Notwithstanding that fact on its merits, the failure to properly serve a pleading similar to a complaint is not found to be a sufficient basis for dismissal of an action. In addition, both parties received notice as of December 2, 2004, through the Board's Waiver of CCRD Investigation; Notice of Preliminary Review. Therefore, Respondent's argument that it had not received any notice of the preliminary review was also without merit.

Mr. Mares moved to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing. Ms. Garcia seconded the motion. The motion passed on the affirmative vote of the following Board members: Mr. Eid, Ms. Garcia, Mr. Mares, Ms. Salkind, and Mr. Zakhem.

V. INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR

- A. Paul Baca v. Department of Corrections, Fremont Correctional Facility, State Personnel Board case number 2004B152 (December 15, 2005).
- B. Patricia Jones v. Department of Corrections, State Personnel Board case number 2003B165 (December 15, 2005).
- C. Leo Bellio v. Department of Revenue, Liquor & Tobacco Enforcement Division, State Personnel Board case number 2005B052(C) (December 23, 2005).

The Board declined to take any action on its own motion in these matters.

VI. REVIEW OF THE MINUTES FROM THE DECEMBER 20, 2005 PUBLIC MEETING OF THE STATE PERSONNEL BOARD

Mr. Zakhem moved to approve the minutes of the December 20, 2005 meeting as submitted. Mr. Mares seconded the motion. The motion passed on the affirmative vote of the following Board members: Mr. Eid, Mr. Mares, Ms. Salkind, and Mr. Zakhem. Ms. Garcia abstained because she was not present at that meeting.

VII. ACKNOWLEDGMENTS

**DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS DECEMBER 20, 2005
PUBLIC MEETING:**

- A. Vern Mirante v. Department of Natural Resources, Colorado State Parks, Steamboat Lake State Park, State Personnel Board case number 2005G074.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing.

- B. Renee Dolman v. Department of Human Services, Division of Vocational Rehabilitation, State Personnel Board case number 2006G028.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing.

VIII. REPORT OF THE STATE PERSONNEL DIRECTOR

There was no report of the State Personnel Director this month.

IX. ADMINISTRATIVE MATTERS & COMMENTS

A. ADMINISTRATIVE MATTERS

- Budget Report and Revenue and Expense Report
- Cases on Appeal to the Board and to Appellate Courts
- Cases Scheduled for Preliminary Review
- Web Site Statistics: October 2005 - 34,969; November 2005 - 33,615
- Opinion affirming Board Order in Smoke v. Department of Labor and Employment, Unemployment Insurance, State Personnel Board case number 2004G025, Court of Appeals No. 04CA1371

In addition to the above-referenced items, Director Rozansky also directed the Board members in a discussion of the Judicial Performance Review Commission and the three newly created positions on the Commission to deal with the increased number of administrative law judges to be reviewed by the Commission. Prior to the meeting, a list of the current members was provided to Board members. She asked for suggestions for persons to be appointed to the Commission. It was determined that Board members would email recommendations with a little background on each person to each other, and then Director Rozansky would take the recommendations to Mike Williams at the Office of Administrative Courts. Ms. Rozansky also mentioned that Jane Sprague was doing database entries of the ALJ caseloads for a survey of practitioners before the Board.

B. OTHER BOARD BUSINESS

- Staff Activities

C. GENERAL COMMENTS FROM ATTORNEYS, EMPLOYEE ORGANIZATIONS, PERSONNEL ADMINISTRATORS, AND THE PUBLIC

X. PROPOSED LEGISLATION AND/OR RULEMAKING

A. Proposed Legislation

1. Director Rozansky reported that the Legislative Legal Services Committee met regarding approval of Board Rules and Director's Procedures, addressing, in total, six Board Rules and Director's Procedures. The only Board rule discussed was the rule regarding whistleblower investigations, 8-25B. The sentence concerning an extension of time for whistleblower investigations must be stricken from that rule because it does not comply with statute; the Committee voted to reject the entire rule since only one sentence of a rule cannot be stricken. The Board may repromulgate the rule and strike the language regarding an extension of time. The Department of Personnel and Administration (DPA), through Paul Farley, Deputy Executive Director, announced to the Committee that it had struck three procedures regarding temporary positions (4-31(B)) and personal service agreements (10-3(F) and 10-5); the Committee voted to reject those three Director's Procedures and two additional procedures: Senior Executive Service (2-11(A)) and multiple vacancy referrals (4-24).
2. Two drafts of remand legislation have been provided to the Board members. Mr. Farley prepared the first draft of 24-50-125(4); the second draft was prepared by Board staff and Board Counsel and sent to Jeff Wells, Executive Director, and Mr. Farley. Board Counsel Sanchez indicated that she had significant concerns with legal issues in the proposed legislation, which she would discuss with the Board members in Executive Session.
3. The last Audit Report recommended that the whistleblower investigations are unnecessary and should be eliminated; the Legislative Audit Committee has put forth legislation based on this recommendation.

B. Rulemaking

Director Rozansky informed the Board that a Notice of Rulemaking was due to the Secretary of State by Friday, January 20, 2006, if there is to be rulemaking on March 21, 2006. Four issues are to be noticed: (1) Board

Rule 8-25B, deleting the sentence regarding extensions of time for the whistleblower investigations; (2) Board Rule 8-59B(H), designations of exhibits for hearings, changing the middle sentence to read, "Complainant's exhibits should be marked using letters, and respondent's exhibits marked using numbers"; (3) Board Rule 8-73B, changing the number of copies of briefs to be filed with the Board to nine; and (4) renumbering the Board rules to eliminate confusion with the Director's Procedures. Ms. Rozansky also noted that the Secretary of State is converting its filing procedures to an online electronic system.

XI. EXECUTIVE SESSION

- A. Case Status Report
- B. Minutes of the December 20, 2005 Executive Session
- C. Other Business

The meeting adjourned by consensus.

* * * * *

APPROVED THIS 21st DAY OF FEBRUARY, 2006.

John Zakhem, Chair

Troy Eid, Member

Diedra Garcia, Member

Donald J. Mares, Member

Elizabeth Salkind, Member